

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-342-W – ORDER NO. 2004-508
OCTOBER 19, 2004

IN RE: Application of Ralph's MHP Water System)	ORDER ADDRESSING
for Approval to Abandon Water System in)	APPLICATION TO
Eastover, South Carolina.)	ABANDON WATER
)	SYSTEM AND
)	APPROVING TRANSFER
)	OF WATER SYSTEM TO
)	RICHLAND COUNTY

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Request of Ralph A. Wilson to abandon the water system known as Ralph’s MHP Water System (“Ralph’s Water” or the “Applicant”) located near Eastover, South Carolina. The Commission, after deciding the request to abandon the system but before issuing a final order on the abandonment case, received a request to transfer ownership of Ralph’s MHP Water System to Richland County. Upon consideration of this matter, the Commission finds that the public interest requires the transfer of ownership of Ralph’s Water to Richland County.

On October 15, 2002, the Commission received a request from Ralph A. Wilson to abandon the water system known as Ralph’s Water which is located near Eastover, South Carolina. The Application to abandon the system was noticed to the public by publication of a Notice of Filing in newspapers of general circulation in the area affected by the request as well as by personal service of the Notice of Filing on the customers of

Ralph's Water. The Notice of Filing advised interested persons of the Application as well as provided information concerning the manner and time in which to file pleadings to participate in the case. Following issuance of the Notice of Filing, the South Carolina Department of Health and Environmental Control ("DHEC") filed a Petition to Intervene in this matter.

Based upon the record before it, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. A hearing on the request to abandon Ralph's Water was held on April 8, 2003, in the Commission's hearing room located at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon L. Clyburn, Chairman, presided. Nathaniel Roberson, Esquire, represented Ralph's Water. Mason A. Summers, Esquire, represented the intervenor DHEC. F. David Butler, General Counsel, and Jeffrey M. Nelson, Staff Counsel, represented the Commission Staff. Ralph A. Wilson testified on behalf of the Applicant, Raymond F. Peterson testified on behalf of the intervenor DHEC, and Sharon G. Scott and William O. Richardson testified on behalf of the Commission Staff ("Staff"). In addition, seven public witnesses appeared and testified before the Commission concerning the requested abandonment of the water system.

2. Mr. Wilson testified that he had lived at 1018 Pond Drive in Eastover, South Carolina since 1995. Mr. Wilson stated that he acquired Ralph's Water in October, 2000, and that he had operated the water system since that time. Mr. Wilson stated that the well for the system is barely pumping water, but he stated that the well is able to

supply sufficient water to the residents and customers which the water system serves. Mr. Wilson further described problems associated with the system such as bacteria in the water, the need to replace the well, and the need to replace the storage tank. According to Mr. Wilson, he does not have the money with which to pay for the repairs or replacement to the water system. Further, Mr. Wilson testified that his health is poor, that he had suffered a stroke in 1991, and that he can no longer operate the water system.

3. Raymond F. Peterson, an Environmental Engineer with DEHC, testified that the sanitary survey from DHEC dated August 29, 2000, resulted in an overall rating of “Needs Improvement.” In March, 2003, DHEC issued a Notice of Violation to Mr. Wilson for the following violations with regard to Ralph’s Water water system: failing to monitor on a monthly basis for Total Coliform during August, 2002, and November, 2002; violating maximum containment levels for Total Coliform during September and October, 2002; and failing to submit written records demonstrating public notification of the Total Coliform violations. According to Mr. Peterson, DHEC plans to hold an enforcement conference with Mr. Wilson in the near future to determine whether any further enforcement action is necessary. Mr. Peterson stated DHEC’s position which is that the Commission should deny the Application for abandonment. As reasoning for the opposition to the abandonment, Mr. Peterson stated that abandonment of the system would pose a potential health risk for the customers of the system if it was allowed to operate without a licensed operator and that if the system were shut down and abandoned, there does not appear to be an alternative source of water reasonably available to the customers of Ralph’s Water.

4. Sharon G. Scott, Auditor for the Staff, testified regarding an audit performed of Ralph's Water. The purpose of the audit was to determine the cash position of Ralph's Water for the twelve-month period ended December 31, 2002. According to Ms. Scott, Ralph's Water experienced a net operating loss of (\$1,891) for the year 2000; a net operating loss of (\$1,773) for the year 1999; and a net operating loss of (\$2,758) for the year 1998. Ms. Scott also testified that Ralph's Water is not maintaining its books and records according to the NARUC Chart of Accounts, that Ralph's Water had no general ledger system, that the records of Ralph's Water consisted of its bank statements, cancelled checks, and customer payment records, that no invoices were being retained by the owner, that Ralph's Water did not deposit all of its revenues in the company's bank account and did not pay all of the expenses by check, and that Ralph's Water did not have the proper documentation or invoices to support expenses or proper use of revenues.

5. William O. Richardson, Chief of the Water and Wastewater area of the Commission's Utilities Department, testified that the system was purchased by David H. Polson in 1991 and that in 1994 Mr. Polson applied to the Commission for service area and rates. Staff learned of the transfer of the system to Mr. Wilson as a result of annual reports being sent to Mr. Polson and Mr. Polson informing the Staff that he was no longer associated with the water system. Staff contacted Mr. Wilson to apply for a transfer of the water system and to post the performance bond required of water companies. When Mr. Wilson was unable to furnish a bond, the then Chief of Water and Wastewater decided not to pursue the filing any further.

6. Following the hearing of April 8, 2003, the Commission issued a Rule to Show Cause against David H. Polson. Mr. Polson filed a response to the Rule to Show Cause and appeared at a hearing on the Rule to Show Cause on October 14, 2003.

7. Mr. Polson testified that by letter dated September 24, 2001, he informed the Chief of the Commission's Water and Wastewater Department that he no longer owned the system and that the system was sold to Ralph A. Wilson in September, 2000. Further, Mr. Polson provided documentation that the Commission had received his application for approval to sell Ralph's Water and all assets to Ralph A. Wilson. Mr. Polson testified that his decision to transfer the system was due to his wife's health and that he did not have the time to be involved with the water system. Further, Mr. Polson indicated that he is unwilling and unable to resume control of the water system.

8. Mr. Richardson of the Commission's Water and Wastewater Department testified at the Rule to Show Cause hearing and provided documentation that showed that Mr. Polson had filed a letter seeking approval to sell the system and the assets of the water company to Ralph A. Wilson and that the application was received by the Commission on September 11, 2000. Mr. Richardson also provided a copy of a letter dated September 13, 2000, from the Commission's Executive Director in which Mr. Polson was advised that the application for approval to sell the system and assets of the water company to Mr. Wilson was docketed in Commission Docket No. 2000-460-W. A copy of a Commission directive advising the Commission of receipt of the application filed by Mr. Polson dated September 26, 2000, was also provided by Mr. Richardson. Copies of correspondence between Mr. Wilson and the Commission Staff and between

Mr. Polson and the Commission Staff concerning ownership requirements with regard to this water system were exchanged. According to the testimony of Mr. Richardson, the transfer of Ralph's Water from Mr. Polson to Mr. Wilson was never brought before the Commission nor approved by the Commission.

9. At the Commission's weekly Commission meeting held on November 12, 2003, the Commission determined that Mr. Polson was the rightful owner of Ralph's Water as that any transfer from Mr. Polson to Mr. Wilson was improper and therefore not valid. Because Mr. Polson did not obtain Commission approval for the transfer, the transfer to Mr. Wilson was not appropriate, and the Commission determined that Mr. Polson was the rightful owner of the water system.

10. Subsequent to the Commission decision, but prior to the issuance of a formal order in this matter, the Commission received correspondence from Mr. Polson, Andy H. Metts of the Richland County Department of Public Works, and J. Mark Noble of DHEC. The correspondence from Mr. Polson requested that the Commission transfer ownership of Ralph's Water to Richland County. Mr. Polson stated that Richland County took the system on March 12, 2004. According to Mr. Polson, Richland County will construct a new water system with new well, storage tank, and distribution system. Mr. Polson offered that Richland County was better able to take care of the system than he was. The correspondence from Mr. Metts indicated that Richland County is willing and able to serve the water system known as Ralph's Water and that on March 12, 2004, Richland County took over ownership of the system and all operations and maintenance of the system. Mr. Metts further stated that Richland County had submitted plans and

specifications to DHEC for approval to replace the existing system with a new system including a new well, storage tank, and distribution system. Mr. Metts advised the Commission that construction would begin on the new system as soon as DHEC issues a construction permit to Richland County. Correspondence from J. Mark Noble of DHEC stated that Richland County took over ownership and operations of Ralph's Water and renamed the system Pond Drive Water System. Mr. Noble further stated that Richland County had submitted an application along with plans and specifications to DHEC requesting permission to replace the well, storage tank, and distribution system and that those plans were under review by DHEC.

11. The Commission finds that the transfer of the water system known as Ralph's MHP Water System to Richland County is in the public interest.

CONCLUSIONS OF LAW

1. 26 S.C. Code Ann. Regs. 103-704 (Supp. 2003) requires "no existing public utility supplying water to the public...shall hereafter sell, acquire, transfer, begin the construction or operation of any utility system, or of any extension thereto...without first obtaining from the Commission a certificate that the sale, transfer or acquisition is in the public interest..." The purported transfer from Mr. Polson to Mr. Wilson did not comply with Regulation 103-704. The Commission did not approve the sale and transfer of Ralph's Water from Mr. Polson to Mr. Wilson. Therefore, the purported transfer from Mr. Polson to Mr. Wilson was not valid.

2. However, the evidence of record demonstrates that neither Mr. Polson nor Mr. Wilson are inclined nor capable of maintaining and operating the system in compliance with Commission Regulations or DHEC standards.

3. Richland County is willing to take the system and operate the system. In fact, Richland County proposes to improve the system by installing a new well, storage tank, and distribution lines. Richland County has indicated a desire to operate the system as well as the ability to properly operate the system. Further, Richland County has begun the process of obtaining the necessary permits from DHEC so that Richland County may properly operate the system.

4. Because Ralph's Water is a utility system responsible for providing potable water to the public, the Commission finds that the public interest requires the transfer of Ralph's Water to Richland County. Therefore, the Commission hereby approves the transfer of Ralph's Water to Richland County.

IT IS THEREFORE ORDERED:

1. The water system known as Ralph's MHP Water System located near Eastover, South Carolina is hereby transferred to Richland County.

2. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)